IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 15988 of 1997 and W.P.NO. 15989 OF 1997
AND
W.M.P. NOS. 25403 25404 OF 1997
W.M.P. NOS. 4422 & 4423 OF 1998

1. The Divisional Railway Manager
Southern Railway
Madurai.

2. The General Manager
Southern Railway
Chennai. .. Petitioners in both WPs

-Vs-

A. John .. Respondent No.1 in WP 15988/97

B. Adaikalasamy .. Respondent No.1 in WP 15989/97

The Presiding Officer
Central Government
Labour Court
Chennai. .. Respondent No.2 in both Wps

Petitions filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorari as stated therein.

For Petitioners : Mr. R.Gunasekaran

For Respondents : Mr. V.Gangadharan, for R1
in both the Writ Petitions

:ORDER

1. In W.P. No.15988 of 1997, the petitioners, namely, Divisional Railway Manager and General Manager, Southern Railway, have jointly prayed for the issue of a writ of certiorari to call for the records relating to the computation ordered by the 2nd respondent Labour Court in claim petition No.124/90 on 13.11.1996 and quash the same.
2. In W.P. No.15989/97, the very same petitioners have prayed for the issue

of a writ of certiorari to call for and quash the computation ordered by the 2nd respondent Labour Court in claim petition No.123/9 0 on 13.11.96.
3. Excepting the fact that the first respondent in each of the writ petition is a different individual, there is no other difference. Therefore, it is sufficient if we refer to the facts in one of the writ petitions.
4. The writ petitions are at the stage of notice of motion. Hence, with the consent of counsel on either side, the writ petitions are taken up for final disposal. Heard Mr.R.Gunasekaran, learned counsel appearing for the petitioner and Mr.V.Gangadharan, learned counsel appearing for the first respondent in both the writ petitions.
5. The first respondent in each of the writ petition moved claim petition under Section 33-C (2) of The Industrial Disputes Act claiming Rs.7,186.37 in W.P. No.15988/97 and Rs.10,846.20 in W.P. No.15989/97. According to the first respondent, he has already been superannuated on 31.1.88. It is the case of the claimant that railway employee is entitled to benefit of conversion of leave of one kind into leave of another kind respectively at the time of retirement for the purpose of encashment of accumulated leave lying to the credit of the retired employee. The claimants further claim that they are entitled to leave on average pay at the rate of one day for every eleven days of the period spent on duty on completion of one year service and leave on half average pay at 20 days for each completed year of service among other kind of leave permissible. Leave on average pay could be accumulated up to a maximum limit of 240 days and the leave on half average pay could be accumulated to any extent. In addition to leave on average pay, railway employee would be entitled to cash equivalent of all the half pay leave lying to his credit.
6. The claimant was having on the date of retirement to his credit 13 1 days of leave on average pay and 460 days of leave on half average pay. The claimant has already encashed the cash equivalent of 131 days of leave on average pay and the respondent has failed to pay cash equivalent of 109 days of leave on average pay, which has already been sanctioned retrospectively. If leave on half average pay already available is converted into leave on average pay, by debit of twice the amount of such leave, the petitioner is entitled get cash equivalent of 109 days of leave on average pay up to the maximum limit of 240 days. Therefore, on this account, the claimant is entitled to Rs.7,1 86.37 in W.P. No.15988/97 and Rs.10,846.20 in W.P. No.15989/97.
7. The refusal on the part of the railways is arbitrary and rejection on the sole ground that the claimant has sought for after retirement is not a valid reason. The mandatory procedure has not been followed by the railways and, hence, the claim petitions.
8. The Railways filed a counter contending that the claim petition is not maintainable in law, besides the claimant cannot invoke Section 33-C (2) of The Industrial Disputes Act since he has no existing legal rights. While setting out the details, the railways have denied and disputed the entire claim and the basis of claim made by the claimant. The leave encashment is admissible only to the extent of leave on average pay applicable to the credit of the workman on the date of retirement up to the ceiling limit of 180 days for those who retire between 30.9.77 and 230.6.86 and 240 days in respect of superannuation on and after 1.7.86, besides addition of 15 days for each half year.

9. There is a provision for conversion of leave, while in service and such provision is not automatic and sanction for conversion on a specific application from the employee has to be ordered and it is at the discretion of the leave sanctioning authority as per the Railway Board circular. The claimant did not apply for leave conversion while in service. Even if it is assumed that the claimant has applied, he cannot claim the conversion as a matter of right since the sanctioning of such conversion is left to the discretion of the sanctioning authority and as the merit of each case will warrant. Leave conversion is not automatic and the claimant cannot claim it as a matter of right. As per Annexure-III, accounting of average pay beyond 180 days will arise only when the petitioner has accumulated 180 days leave on average pay as on 30.6.86. But factually in the case of the claimant, leave on average pay, which was lying to the credit of the claimant was 87 days as on 30.6.86 and he has been paid Rs.88,637/= towards encashment of leave of 131 days leave on average pay. The Railways have set out the break-up particulars in this respect.

10.The claim that the railway employee is entitled to encash all the half pay leave (leave on half average pay) is a misconception as encashment of leave is provided for on leave on average pay and not for encashment of leave on half average pay. As the claimant has already been paid leave on average pay, he is not entitled to any further claim, much less towards leave on half average pay nor the conversion is permissible. Therefore, the claimant is not entitled to any amount as claimed.

11. Before the 2nd respondent Tribunal, the claimant examined himself, which the Railways marked Ex.P-1 and no witness has been examined. The claimant has not marked any exhibit.

12. The 2nd respondent Tribunal framed the following point for consideration :-

"Whether the petitioner is entitled to the relief sought for by him in this writ petition ?"

13. While answering the said point, the 2nd respondent Labour Court sustained the claim of the claimant and directed the Railways to pay Rs.7,186.37 on the view that the claimant is entitled to the relief, namely, encashment of leave on half average pay. The said order passed by the 2nd respondent Tribunal on 13.11.96 in the claim petition is being challenged.

14. Factually there is no controversy with respect to the number of days, which the claimant worked in each case either for leave on average pay or leave on half average pay. Equally there is no dispute that the claimant has been paid for leave on average pay and no amount is due in this respect in both the writ petitions. The dispute is in respect of leave on half average pay, which is claimed by the claimants and denied by the respondents. The claimant in both the writ petitions have been superannuated and long after superannuation they have invoked the jurisdiction of the 2nd respondent Labour Court under Section 33-C (2).

15. The 2nd respondent Labour Court proceeded on the premise that the claimant is entitled to automatic conversion of leave on average pay and entitled to encash the same. The 2nd respondent Labour Court has proceeded on the premise that conversion of one leave to another category is automatic and, therefore, even after retirement such a claim could be made. In that view of the matter, the Labour Court computed the money value of the claim.

16. In the present writ petitions, it is being contended by the learned

counsel appearing for the Railways that conversion is not automatic; the conversion claimed by the claimant will run counter to the existing rules. It is also contended that having failed to seek for conversion at the appropriate time while in service, it is not permissible for the petitioner to seek for encashment of the said leave on half average pay after retirement, though it is accumulated to the credit of the claimant. The 2nd respondent has proceeded on a misconception of the rule and the computation ordered by the 2nd respondent suffers with error apparent on the face of the record and it is illegal.

17. The points that arise for consideration in both the writ petitions are :-

"i) Whether the claimant before the 2nd respondent Labour Court is entitled to seek for a direction for encashment of leave on half average pay as a matter of course and without even applying for such conversion of the same while in service ?

ii) Whether the order of the 2nd respondent Tribunal is liable to be interfered as one not maintainable, arbitrary and suffer with error apparent on the face of the record ?

iii) To what relief, if any, the petitioner in each of the writ petition is entitled to ?"

All the above points could be considered together.

18. It has to be pointed out that the 2nd respondent Labour Court has not even referred to the rule governing the grant of leave by the railways and as a matter of routine and in a casual way has proceeded as if the claimant is entitled to encashment of even leave on half average pay without there being an application for conversion during the service and in the absence of any rule or order or circular, which would enable the claimant to encash even the leave on half average pay and that too after retirement.

19. Chapter IV of The Indian Railway Establishment Code prescribes the leave rules. It is called Railway Services (Liberalised Leave) Rules, 1949. There is no controversy that the said Rules apply to the case on hand. Rule 503 reads thus :-

"503. Leave cannot be claimed as of right and leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Railway servant."

20. Rule 505 provides for conversion of one kind of leave to another kind and it reads thus :-

"505 (1). At the request of a railway servant, made before he ceases to be in service, the authority which granted him leave may convert it retrospectively into leave of a different kind which was due and admissible to him at the time the leave was granted, but the railway servant cannot claim such conversion as a matter of right.

(2) The conversion of one kind of leave into another shall be subject to adjustment of leave salary on the basis of leave finally granted to the railway servant, that is to say, any amount paid to him in excess shall be recovered or any arrears due to him shall be paid."

21. A perusal of Rule 505 would show that a railway servant may, before he ceases to be a servant, may convert one kind of leave to a different kind of leave retrospectively, which was due and admissible to him at the time the leave was granted, but he cannot claim such conversion as a matter of right. Sub-rule (2) of Rule 505 provides that the conversion of one kind of leave

into another shall be subject to adjustment of leave salary on the basis of leave finally granted to the railway servant.

22. The next rule, which is relevant being Rule 523, which provides for leave on average pay. Rule 523 reads thus:-

"523 (1)(a)(i) A railway servant permanent or temporary other than one who is serving in a railway school shall be entitled to 30 days leave on average pay in a calendar year.

(ii) The leave account of every railway servant shall be credited with leave on average pay in advance in two instalments of 15 days each on the first day of January and July every calendar year.

b) The leave at the credit of a railway servant at the close of the previous half year shall be carried forward to the next half year subject to the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 180 days.

(c) A period spent in foreign service shall count as duty for purpose of this rule, if contribution towards leave salary is paid on account of such period.

(2) Subject to the provisions of rules 503, 541 as well as this rule, the maximum leave on average pay that may be granted at a time to a railway servant shall be 120 days."

23. Rule 526 provides for 20 days leave to a railway employee on half pay in respect of each completed year of service. Such leave may be granted on medical certificate or on private affairs. Rule 527 provides for commuted leave. Rule 541 mandates that no leave shall be granted to a railway servant beyond the date of his retirement or the date of his final cessation of duties or the date on which he retires by giving notice or date of his resignation from service, but he may be allowed the benefit of encashment of leave on the date of cessation of service or expiry of extension or re-employment in respect of leave on average pay at his credit on the date of superannuation plus leave on average pay earned during extension or re-employment reduced by leave on average pay availed of during such period, subject to a maximum of 180 days. Rule 550 provides for cash equivalent in lieu of unutilised leave on average pay on the date of retirement.

24. While drawing attention of this Court to the above rules, the learned counsel for the Railways contended that there is no provision for encashment of leave on average pay, which remained to the credit of the railway employee on the date of his superannuation or resignation. There is force in this contention. Concedingly, no application has been made for conversion of leave by the claimant before his retirement and such conversion having not been applied for, while in service, the claimant will not at all be justified in putting forward such a novel claim.

25.The approach of the 2nd respondent Labour Court is a clear misreading and misconceptin of the leave rules and there is no legal basis to sustain the claim. The 2nd respondent Labour Court had conveniently omitted to refer to the rules framed by the Railways governing leave on average pay, half pay and encashment thereof. Factually such encashment of leave on half average pay is not permissible in law on the facts of the case as the claimant has not sought for conversion, while he was in service and he is not entitled for conversion of one kind of leave to another kind of leave at any time and seek to encash the same. The 2nd respondent Labour Court proceeded on a wrong premise and the order of the 2nd respondent is vitiated by illegalities.

26. The Railways relied upon the amendment to Rule 505. In terms of the said

amendment to Rule 505 of the said leave rules, the amendment being that any request for conversion of one kind of leave to another kind of leave shall be considered in this respect by the leave sanctioning authority, within a period of 30 days of the concerned railway servant, spell of leave availed by him.

27.It is rightly pointed out that unless the rules provide for encashment of the leave on half average pay, and such amount is payable on the superannuation, the claimant is not entitled to maintain such a claim. Admittedly, the claimant has not moved the competent authority to convert the leave on half average pay, i.e. one kind of leave to another kind and this is fatal as he has sought for conversion of one kind of leave to another kind after retirement and by way or claim petition. In terms of Rules such a conversion should have been sought for before superannuation and considered within 30 days after applying. The claimant cannot seek for conversion of one kind to leave of another kind of leave except in accordance with the Rules and that too after retirement, when there is no provision.

28. In KANHAIYALAL PARASAI VS. UNION OF INDIA & OTHERS reported in 19 95 Supp. (4) SCC 73, the Apex Court, while deciding the claim of a Government employee governed by Rule 39 (1), (2) and (5) of the leave rules, held thus:-

"2. ..... Government servants who retire or are retired prematurely constitute a class distinct from the class of those who avail of the benefit of full service till the date of superannuation and, therefore, if they are governed by separate sets of rules in regard to leave encashment, the latter cannot complain of hostile discrimination nor can it be said that the rule governing the latter class is arbitrary as it does not extent the benefit of en cashment of half pay leave to those who superannuate in due course. Under Rule 39(1) as soon as the services of a government servant terminates in one way or the other he ceases to be entitled to leave but provision is made for leave encashment and he would be entitled thereto under the rules only. The reasons for permitting encashment of half pay leave not exceeding the period between the date on which he retires or is retired and the date of his normal superannuation is that premature or compulsory retirement deprives the government servant of the chance t avail of half pay leave because of the sudden termination of his relationship which is not the case with those who retire in due course on superannuation. Since encashment of half pay leave was not admissible under the rules obtaining on the date of the petitioner's superannuation in 1980, we think the present petition is misconceived, more so because we do not find the challenge based on Article 19(1)(f) and Article 14 to be well founded." (emphasis supplied)

29. In the absence of any rules governing the service of the claimant, the computation of claim under the heading claim of money value for leave on half average pay is not admissible in law.

30. The Supreme Court had examined the introducing of benefit and held that such a scheme is not arbitrary and it is not violative of Article 14.

31.In the present case, there is no rule at all nor a scheme has been framed to entitle the workman to encash the leave on half average pay, which remain unavailed by the claimant on the date of retirement. At any rate, even assuming that he could seek for conversion of leave on half average pay to leave on average pay, so that he could get the maximum encashment of 240 days, in this case, factually no such application has been submitted by the claimant and only after number of years he has approached the Labour Court in this respect. The computation by the 2nd respondent Labour Court cannot be

sustained as it runs counter to the leave rules and in the absence of any scheme or rules, neither the conversion is permissible after superannuation nor such a conversion could be considered at all and at any rate the claimants are not entitled to payment towards encashment of leave on half average pay, which was lying to the credit of the individual employee on the date of retirement.

32. The contention advanced by Mr.Gangadharan, learned counsel for the first respondent in each of the writ petition and the view of the 2 nd respondent Labour Court cannot be sustained as it suffers with illegality, error apparent on the face of the record and there is no rule conferring such a right on the claimants before it. In the circumstances, the claim are not maintainable in law.

33. The computation ordered by the 2nd respondent Tribunal in C.P. Nos. 123 and 124 of 1990 on 13.11.1996 are quashed and the said claim petitions shall stand dismissed. The writ petitions are allowed. The parties shall bear their respective costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

GLN

To

1. The Divisional Railway Manager
Southern Railway
Madurai.

2. The General Manager
Southern Railway
Chennai.

((SCO LYRIX 6.1
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